

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICKY B. MILBOURNE	:	CIVIL ACTION
	:	
v.	:	NO. 02-2122
	:	
JOHN MASTERS, <u>et al.</u>	:	

MEMORANDUM AND ORDER

Kauffman, J.

January 25, 2006

Plaintiff Ricky Milbourne (“Plaintiff”), formerly an inmate incarcerated at the Chester County Prison (“CCP”) brings this action under 42 U.S.C. § 1983 (“§ 1983”) against CCP Warden John Masters, Corrections Officer T. Audette, Corporal Lawson, Corporal Sanderfur, Sargent Johnson, Corrections Officer Wilson, Corrections Officer L. Taylor, Corrections Officer J. Sullivan, Corrections Officer McMinn, Corrections Officer E. Hamilton Major and the Disciplinary Board Members (collectively, “Defendants”). The Amended Complaint requests compensatory and punitive damages as well as fees and costs for alleged violations of Plaintiff’s federal constitutional and state common law rights when he was placed in restrictive custody following an altercation between inmates and prison guards.

Now before the Court is Defendants’ Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56. For the reasons stated below, the Court will grant the Motion.

I. Background

On December 3, 2001, Plaintiff filed his initial complaint (“Original Complaint”) in this action pursuant to § 1983, alleging violations of his rights under the 1st, 8th and 14th Amendments. Original Complaint at 1-2. The Original Complaint, filed in the Middle District of Pennsylvania, focused on an altercation that occurred on November 4, 2001 between inmates

and CCP prison guards. Id. at 2. Plaintiff alleged that, as a result of this incident, he and other prisoners were improperly confined to “the hole,” where Plaintiff suffered conditions in violation of the 8th and 14th Amendments.¹ Id. At 3-5. Plaintiff sought declaratory and injunctive relief as well as compensatory and punitive damages. Id. At 5-6.

On February 15, 2002, Plaintiff, along with five other CCP inmates filed a second complaint (“Van Antwerpen Complaint”) before Judge Van Antwerpen in this District. The Van Antwerpen Complaint was also filed pursuant to § 1983 and alleged violations of plaintiffs’ 1st, 8th and 14th Amendment rights. Van Antwerpen Complaint at 2. As with the Original Complaint, the allegations stemmed primarily from the November 4 incident and the resulting maximum security confinement.² Id., Exhibits A-E. In addition, with the exception of the CCP Kitchen, Administrative Departments, Counselor Ortiz, Sgt. Madonna and Sgt. Cochlin, who are named as defendants in the Van Antwerpen Complaint but not the Original Complaint, defendants in both complaints are identical.

On March 28, 2002, the Original Complaint was transferred to this District because the conduct complained of occurred in Chester County. On May 23, 2003, Plaintiff’s newly appointed counsel filed an amended complaint (“Amended Complaint”).

¹ Plaintiff also makes vague and non-specific allegations of religious discrimination in violation of the 1st Amendment.

² The allegations in the Van Antwerpen Complaint go further than those in the Original Complaint, specifically alleging incidences of religious discrimination.

The Amended Complaint again alleges violations of Plaintiff's rights as secured by the 8th and 14th Amendments.³ In addition, the Amended Complaint adds new claims under state law including, inter alia, assault and battery and intentional infliction of emotional distress. Amended Complaint at 6-10. As in both the Original and Van Antwerpen Complaints, the Amended Complaint seeks declaratory relief and compensatory and punitive damages.⁴

On October 10, 2003, Judge Van Antwerpen granted summary judgment in favor of defendants and dismissed the Van Antwerpen Complaint with prejudice.

Defendants bring this Motion for Summary Judgment arguing that res judicata requires the dismissal of Plaintiff's Amended Complaint.⁵

II. Legal Standard

In deciding a motion for summary judgment pursuant to Fed. R. Civ. P. 56, the test is "whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Med. Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (quoting Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The Court must examine the evidence in the light most

³ The Amended Complaint does not include the 1st Amendment allegations found in the Original Complaint.

⁴ The Amended Complaint does not seek injunctive relief because Plaintiff had been released from prison by the time it was filed.

⁵ Defendants make additional arguments in support of their Motion for Summary Judgment. Because this Court will grant summary judgment on res judicata grounds, it need not reach them.

favorable to the non-moving party and resolve all reasonable inferences in that party's favor.

Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986) (citing United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)). However, “there can be ‘no genuine issue as to any material fact’ . . . [where the non-moving party’s] complete failure of proof concerning an essential element of [its] case necessarily renders all other facts immaterial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

The party moving for summary judgment bears the initial burden of showing the basis for its motion. See Shields v. Zuccarini, 254 F.3d 476, 481 (3d Cir. 2001). If the movant meets that burden, the onus then “shifts to the non-moving party to set forth specific facts showing the existence of [a genuine issue of material fact] for trial.” Id.

III. Analysis

Res judicata precludes parties from relitigating issues that were or could have been raised in an action that resulted in a final judgement on the merits. See San Remo Hotel, L.P. v. City and County of San Francisco, 125 S.Ct. 2491, 2500 (2005). Application of res judicata requires a showing by Defendants that there has been (1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same causes of action. See United States v. Athlone Indus., Inc., 746 F.2d 977, 983 (3d Cir. 1984).

Defendants argue that since the Van Antwerpen Complaint is based on facts virtually identical to those contained in the Amended Complaint and there is no genuine issue of material fact as to Plaintiff's participation in the lawsuit before Judge Van Antwerpen, Plaintiff's Amended Complaint should be barred by res judicata. Defendants' Motion for Summary Judgment (“Deft’s Motion”) at 6.

In response, Plaintiff claims that res judicata is not appropriate in this case since the elements that ordinarily make a claim preclusive have not been met. Plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment ("Opposition") at 4.

The Principals of Res Judicata.

A. Final Judgment on the Merits

Judge Van Antwerpen's Order granting Defendant's Motion for Summary Judgment may be considered a final judgment on the merits for res judicata purposes.⁶ See Hubicki v. ACF Inds., Inc., 484 F.2d 519, 524 (3d Cir. 1973) ("[T]he law is clear that summary judgment is a final judgment on the merits sufficient to raise the defense of res judicata in a subsequent action between the parties."). Accordingly, the Court will treat Judge Van Antwerpen's Order granting Defendants' Motion for Summary Judgment as a final judgment on the merits for purposes of res judicata analysis.⁷

B. Identity of the Parties

⁶ Judge Van Antwerpen noted in his order of dismissal that he had conducted a complete review of the record and found the defendants' motion to have merit. See 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4444, p.296 (2002) ("Preclusion is appropriate even if the summary-judgment motion went unopposed.").

⁷ The fact that the Van Antwerpen Complaint was filed subsequent to the Original Complaint does not bar the application of res judicata. See Murphy v. Landsburg, 490 F.2d 319, 323 (3d Cir. 1973) ("To be given res judicata [] effect, a judgment need not be entered prior to the commencement of the action in which the binding effect of the judgment is sought."); Carr v. Cigna, 95 F.3d 544, 546 (7th Cir. 1996) ("It is [] true that the barred suit could be a suit that had been filed before the suit in which the preclusive judgment is entered."). See also 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4404, p.46 (2002) ("Several federal cases recognize the general rule that as between actions pending at the same time, res judicata attaches to the first judgment regardless of the sequence in which the actions were commenced.").

As noted above, while the Court recognizes that there are Defendants included in the Van Antwerpen action that are not named in the Amended Complaint, it is indisputable that all Defendants named in the Amended Complaint are also named in the Van Antwerpen Complaint. Thus, all Defendants asserting a res judicata defense were party to the prior preclusive judgment. Moreover, Plaintiff, against whom the prior judgment is to be enforced, is a named party in both actions. Accordingly, the identity of parties requirement has been satisfied..

C. Causes of Action

The final question the Court must resolve is what has been termed the “identity of causes of action.” See e.g., Athlone, 746 F.2d at 983. The Third Circuit has noted that in deciding whether two suits are based on the same “cause of action,” courts should take a “broad view,” looking to whether there is “an essential similarity of the underlying events giving rise to the various legal claims.” Id. at 984.

Plaintiff argues that his demand for recovery and theory of liability in the Amended Complaint differ substantially from those contained in the Van Antwerpen Complaint. The Court disagrees. Both complaints arise from the events of November 4, 2001 and the resulting confinement. It is true that plaintiffs in the Van Antwerpen action go further in their allegations of religious discrimination than Plaintiff does in his Amended Complaint. However, the gravamen of both complaints is the constitutional deprivation suffered as result of the events of November 4. Furthermore, the Affidavit Plaintiff attached to the Van Antwerpen Complaint reveals the similarity of the claims and theories of liability in the two actions.

Moreover, even though Plaintiff has included claims in his Amended Complaint not found in the Van Antwerpen Complaint, res judicata also gives dispositive effect to an issue that

could have been raised in the earlier proceeding, whether or not Plaintiff chose to do so.

Corestates Bank, N.A. v. Huls America, Inc., 176 F.3d 187, 194 (3d Cir. 1999).

Accordingly, having found that there has been a prior judgment on the merits in a suit involving Plaintiff and all Defendants seeking to assert res judicata and based on the same cause of action, the Court finds that Plaintiff's Amended Complaint is barred by res judicata.

IV. Conclusion

For the foregoing reasons, Defendants' Motion for Summary Judgment will be granted. An appropriate Order follows.

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CIVIL ACTION

NO. 02-2122

ORDER

AND NOW, this 25TH day of January, 2006, upon consideration of Defendants' Motion for Summary Judgment (docket no. 27), it is **ORDERED** that the Motion is **GRANTED** for the reasons set forth in the accompanying memorandum. Judgment is entered in favor of Defendants. The Clerk of the Court shall mark the case **CLOSED**.

BY THE COURT:

/s/ Bruce W. Kauffman

BRUCE W. KAUFFMAN, J.